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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,031	05/02/2006	Stephen Norman Batchelor	C4334(C)	9574

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EXAMINER	
DELCOTTO, GREGORY R	

ART UNIT	PAPER NUMBER
1796	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/578,031	BATCHELOR ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 May 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) *9-11* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-11* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/06, 6/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-11 are pending. The preliminary amendment filed 5/2/06 has been entered.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-8, drawn to a bleaching composition.

Group II, claim(s) 9-11, drawn to a method of bleaching a textile stain.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Claim 1, at least, is anticipated by or obvious over Kaaret et al (US 2003/0192130). Consequently, the special technical feature which links claims 2-11, a bleaching composition comprising Food red 14 dye, does not provide a contribution over the prior art, so unity of invention is lacking.

During a telephone conversation with Rimma Mitelman on September 10, 2008, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-8. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaaret et al (US 2003/0192130) in view of Matsuo et al (US 2003/0192133).

Kaaret et al a fabric treatment composition that includes at least one zeta potential modifier and a hydrophobic agent with a melting point or glass transition temperature below 100 degrees Celsius, that imparts fabric protection benefits, including improved stain resistance, oil repellency, water repellency, softness, wrinkle and damage resistance. The composition can be used as a pretreatment prior to washing , through soaking or direct spray application, or added to the wash or rinse cycle of an automatic washing machine, or used prior to or during the drying cycle of an automatic drying machine. See Abstract. The liquid carrier is preferably an aqueous system. See paras. 37-40. The pH of a 10% solution of compositions may be adjusted to be in the range from about 2 to about 11. See paras. 54 and 55. The composition can contain a nonionic surfactant, cationic surfactant, amphoteric, zwitterionic, or anionic surfactants. See paras 61-79. Optionally, dyes and colorants can be added to the composition. Typical concentrations of these compounds may range from about 0.001% to about 0.8% by weight. Suitable dyes include Acid Red 51, etc. See paras. 98-101. Note that, as evidenced by Matsuo et al (See para. 28 of Matsuo et al), Acid Red 51 is the same compound as Food Red 14 dye since Acid Red 51 has a CI number of 45430 which is the same for the CI number of Food Red 14 dye as listed on page 5 of the instant specification. Additionally, the compositions may contain from about 0.01% to about 15% of a bleaching agent. See para. 136.

Kaaret et al do not teach, with sufficient specificity, a composition capable of delivering the specific pH containing Food red 14 dye and the other requisite components of the composition in the specific amounts as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition capable of delivering the specific pH containing Food red 14 dye and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of Kaaret et al suggest a composition having the specific pH containing Food red 14 dye and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Claims 1, 2, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuo et al (US 2003/0192133).

Matsuo et al teach an oxidative hair bleach or hair dye comprising a first pack with an alkalizing agent contained therein and a second pack with an oxidizing agent contained therein, wherein the oxidative hair bleach or hair dye comprises the following ingredients in the following proportions in a whole composition after mixing the first pack and the second pack together, and has a ph of from 8 to 12: a water-miscible organic solvent in an amount of 8 to 40% by weight, an alkalizing agent in an amount from 0.1 to 10% by weight, an oxidizing agent in an amount from 0.1 to 12% by weight, and water in an amount from 25 to 70% by weight. See Abstract. When the composition is a hair dye, an oxidative dye intermediate or a direct dye is incorporated. Suitable direct dyes include Acid Red 51 (C.I. 45430), etc., which is the same as Food Red dye 14

since they have the same C.I. number of 45430 as listed in the instant specification on page 5. The direct dyes can be used either singly or in combination in amounts from 0.001 to 5% by weight. See paras. 28-31. Additionally, other components such as preservatives, vitamins, colorants, pigments, etc., may be added to the compositions. See paras. 33-34.

Matsuo et al do not teach, with sufficient specificity, a composition capable of delivering the specific pH containing Food red 14 dye and the other requisite components of the composition in the specific amounts as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition capable of delivering the specific pH containing Food red 14 dye and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of Matsuo et al suggest a composition having the specific pH containing Food red 14 dye and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaaret et al (US 2003/0192130) as applied to claims 1, 2, and 6-8 above, and further in view of Adriaanse et al (US 2002/0198127).

Kaaret et al are relied upon as set forth above. However, Kaaret et al do not teach the use of an air bleach catalyst in addition to the other requisite components of the composition as recited by the instant claims.

Adriaanse et al teach an aqueous liquid cleaning composition having a pH of at least 7, preferably from 7 to 11, more preferably from 7 to10 and comprising from 1% to 90% by weight of a surfactant, a proteolytic enzyme and a primary stabiliser therefor, the composition further comprising an organic substance which forms a complex with a transition metal, the complex being capable of catalysing bleaching of a substrate by atmospheric. See Abstract. The liquid bleaching compositions will be wholly devoid or peroxygen bleach or peroxy-based or –generating bleach systems. See para. 616. The compositions can further contain other ingredients including hydrotropes, dyes, pigments, solvents, photoactivators, etc. See para. 150-151.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a air bleach catalyst in the composition taught by Kaaret et al, with a reasonable expectation of success, because Adriaanse et al teach the use of an air bleaching catalyst in a similar composition and further, Kaaret et al teach the use of bleaching agents in general.

Claims 1-3 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adriannse et al (US 2002/0198127) in view of Kaaret et al (US 2003/0192130) and Matsuo et al (2003/0192133).

Adriannse et al are relied upon as set forth above. However, Adriannse et al do not teach the use of Food red 14 dye or a composition capable of delivering the specific pH containing Food red 14 dye and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Kaaret et al and Matsuo et al are relied upon as set forth above. Note that, as evidenced by Matsuo et al (See para. 28 of Matsuo et al), Acid Red 51 is the same compound as Food Red 14 dye since Acid Red 51 has a CI number of 45430 which is the same for the CI number of Food Red 14 dye as listed on page 5 of the instant specification.

It would have been obvious to one of ordinary skill in the art, at the time the invention is made, to use Food Red dye 14 in the composition taught by Adriannse et al, with a reasonable expectation of success, because Matsuo et al teach the use of Food Red dye 14 in a similar composition as a dye and further, Adriannse et al teach the use of dyes in general.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition capable of delivering the specific pH containing Food red 14 dye and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of Adriannse et al in combination with Kaaret et al and Matsuo et al suggest a composition having the specific pH containing Food red 14 dye and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuo et al as applied to claims 1, 2, 6, and 7 above, and further in view of Vermeer (US 5,653,970).

Matsuo et al are relied upon as set forth above. However, Matsuo et al do not teach the use of Vitamin K in addition to the other requisite components of the composition as recited by the instant claims.

Vermeer teaches personal product compositions containing heteroatom containing alkyl aldonamide compounds and skin conditioning agent. See Abstract. Examples of vitamins useful in the composition which provide the hair with valuable nutrition include vitamin K3, etc. See column 39, lines 40-55.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use Vitamin K3 in the composition taught by Matsuo et al, with a reasonable expectation of success, because Vermeer teaches that the use of Vitamin K3 in a hair care composition provides valuable nutrition to hair and further, Matsuo et al teach the use of vitamins in general.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571)

272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory R. Del Cotto/
Primary Examiner, Art Unit 1796

/G. R. D./
September 10, 2008